IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

OP.No. 14063 of 2001(Y)

PETITIONER:

SOBHA SADANANDA, W/O. LATE SADANANDAN,, VALLATH HOUSE,
KARUVANNUR P.O., IRINJALAKUDA (VIA), THRISSUR DIST.

BY ADV. SRI.K.BABU THOMAS
SMT.MARYKUTTY BABU

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR,
COLLECTORATE, TRISSUR.

2. THE DEPUTY TAHSILDAR (RR), MUKUNDAPURAM TALUK,
IRINJALAKUDA P.O., TRISSUR.

3. THE VILLAGE OFFICER, PORATHISSERY VILLAGE, IRINJALAKUDA, TRISSUR.

4. THE ADDL. SALES TAX OFFICE-V, FIRST CIRCLE, PALAKKAD.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 22391 OF 2001 IN OP 14063 OF 2001

DISMISSED

3.12.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER NO. 3111/2258/97-98 OF THE FOURTH RESPONDENT DATED 6.10.2000

EXT.P2 DO. DO. OF DEMAND NOTICE NO. D10-9031/01 OF THE 2ND RESPONDENT DATED 3.4.2001

EXT.P3 DO. OF REPRESENTATION/OBJECTION TO RESPONDENTS 1 AND 2 DATED 16.4.2001

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 14063 OF 2001

Dated this the 3rd day of December, 2007

JUDGMENT

Petitioner, who is the widow of the defaulter is challenging recovery proceedings for recovery of arrears of sales tax due for the year 1997-98. It is seen that assessment itself is made in the name of the petitioner and her children as legal heirs of late assessee. Petitioner has not chosen to file appeal against Ext.P1 assessment, but challenged the assessment directly in this Court by filing this O.P. Even though statutory remedy is available to the petitioner, I am constrained to consider the case on merits because this Court admitted the O.P. and granted stay six years back and disabled the petitioner from filing statutory appeal in time. Petitioner's late husband was a retail dealer in Indian made foreign liquor during the year 1997-98. He declared the sales turnover at Rs. 2,07,52,895/-. Since liquor was taxable at the point of first sale in the State he had not declared any taxable turnover. The assessee or legal heirs did not produce entire bills or records pertaining the transaction. The assessing officer noticed that gross

profit returned was 8.79 % as against 14.6 per cent declared by the same assessee in the immediately preceding year. Since records were not produced and no explanation was offered for low gross profit returned, the Officer estimated the turnover by applying the gross profit at 14.6 per cent, which is the rate at which gross profit was declared by the very same assessee for the preceding year. I do find anything illegal, or irregular or arbitrary in the estimation of turnover by adding 14.6 per cent of the gross profit to the purchase turnover. In fact Government Pleader pointed out that in same business the gross profit returned by other dealers is much more. In the circumstances, estimation of sales turnover is upheld. However, I find the assessing officer has demanded tax at single point on a turnover of Rs. 5000/- without any material to prove that petitioner's late husband had purchased illicit liquor and sold the same. Therefore addition of tax at 75% of Rs. 5,000/- is cancelled. Even though counsel for the petitioner contended that the demand of interest under Section 23(3) for any period prior to the period of default is illegal, Government Pleader pointed out that interest is levied under Section 23(3) by virtue of

operation of Section 23(3A) which came into force on 1.4.1998. Even though interest can be demanded under Section 23(3) read with Section 23(3A), it is seen that the provision was applied by the assessing officer for one year prior to the introduction of the same. In the circumstances, Officer is directed to demand interest under Section 23 (3) after revision of assessment as above from 5/98 to 10/2000 that is by deleting demand for the period from 5/97 to 4/98. Petitioner is liable to pay interest under Section 23(3) for the period of default, even though stay was granted by this Court. Counsel for the petitioner submitted that even though Amnesty benefit introduced in 2004 was available to the petitioner, petitioner could not avail the same on account of pendency of the O.P. and the stay granted by this Court. In the circumstances, interest payable under Section 23(3) for the period of default is reduced to 50% provided petitioner clears the arrears within two months from now. The assessing officer is directed to revise the assessment, issue fresh demand notice as above with reduced interest within two weeks from the date of production of a copy of this judgment for the petitioner to settle the liability within the time granted

herein. Petitioner will produce copy of this judgment before the Officer for compliance. If payment is not made within the time granted, waiver of interest partly granted will stand cancelled.

(C.N. RAMACHANDRAN NAIR)
Judge